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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,487	06/28/2001	Klaus Dillinger	21795	5915

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THE FIRM OF KARL F ROSS  
5676 RIVERDALE AVENUE  
PO BOX 900  
RIVERDALE (BRONX), NY 10471-0900

EXAMINER

SMITH, RUTH S

ART UNIT PAPER NUMBER

3737

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*Ruth*

<b>Office Action Summary</b>	Application No. 09/894,487	Applicant(s) DILLINGER ET AL.	
	Examiner Ruth S. Smith	Art Unit 3737	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Regarding claims 1,2,10,11, the disclosure does not adequately disclose how electromagnetic (EM) spectra containing "homeopathic" information is obtained and stored in music compression format. Although the present invention admits that it is known to obtain and store low frequency (0-22 KHz) homeopathic EM spectra as disclosed in previous patent (5,830,140 to Dillinger et al. - not expressly incorporated by reference), the current specification does not set forth any procedures for obtaining an analog electromagnetic spectrum representing homeopathic information - but rather appears to be concerned with accessing previously obtained data from a network data bank. In addition, the present disclosure does not address how obtained long wave electromagnetic spectra (current specification p. 3 lines 19-22) are stored in music compression format. For example, Dillinger superimposes the electromagnetic spectra on a carrier wave (such as 10 Hz), however the present disclosure does not address whether the digitized electromagnetic spectra is converted to a higher frequency or superimposed on a carrier wave (analogous to Dillinger) so as to be stored in MP3 format, or music compression format for that matter.

The specification does not adequately disclose what wavelengths are obtained and applied for "homeopathic" therapy. Except for 5,830,140 (which is not expressly incorporated by reference), there is no mention whatsoever of specific wavelengths suitable for the present invention. For example, what wavelengths correspond to treatment of stress, digestive, disorders, headaches, etc.? It is further unclear whether the wavelengths used are similar or different from those used in the '140 patent.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dillinger et al in view of Kim. Dillinger et al. shows that it is known to obtain and store electromagnetic information representing homeopathic information in digital format for later reproduction and direct therapy by stimulation of e.g., sensory organs (col. 2 lines 3-9, col. 5 lines 4-13) wherein the characteristic information is superimposed on carrier waves (col. 4 line 63 - col. 5 line 1). Dillinger et al. differs from the claimed invention in that storage/reproduction of the electromagnetic information in compressed musical format is not specifically addressed. Kim demonstrates that it is known to stimulate sensory organs via (computer reproduced) music for therapy (e.g., stress relief, etc.) based on a physiological indication (col. 3 lines 52-54). It would have been obvious at the time the invention was made to a person of ordinary skill in the art to modify the carrier waves of Dillinger et al. to mere higher frequency (audio) carrier waves for music therapy as taught by Kim for effective natural therapy of sensory organs and relief of stress as is known in the art. Dillinger et al. also discloses wherein the data may first be digitally summed and weighted by the digital processor (col. 3 lines 40-47). Dillinger et al. differ from the claimed invention in that storage/access of the electromagnetic information via a global computer network is not specifically addressed. Kim demonstrates that it is known to use computer reproduced digital information for naturopathic therapy (e.g., stress relief, etc.) based on a physiological indication (col. 3 lines 52-54). Kim further discloses wherein the digital data may be accessed/transferred via the Internet (col. 2 lines 40-44, col. 3 lines 58-60) and selected from a home page (70). See also col. 5 line 49 - col. 6 line 35. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to store/access the digital information of Dillinger et al. via a web page and the Internet as taught by Kim (as opposed to a CD-ROM) for increased user access and availability to most recently updated programs.

Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dillinger in view of Kim and further in view of Kehr et al. Kim et al. disclose accessing music for therapy over the Internet, however, MP3 format is not addressed explicitly. Kehr et al. generally demonstrates that it is well known to use MP3 format for storage and retrieval of music over the Internet e.g., (0274). It would have been obvious at the time the invention was made to a person of ordinary skill in the art to use MP3 format in the invention as taught by Dillinger in view of Kim for effective transfer of music over the Internet as is well known in the art.

### ***Response to Arguments***

Applicant's arguments filed April 29, 2005 have been fully considered but they are not persuasive. It should be noted that applicant did not cancel claims 12-21 as indicated in the remarks on page 10 of the amendment filed 4/29/05.

Applicant's attention is invited to MPEP 608.01(p) which states that essential subject matter can be incorporated by reference into an application, however, the application must specifically set forth that such patents are being "incorporated by reference". Mere reference to another patent is not an incorporation of anything therein into the application containing such reference for the purpose of the disclosure required by 35 USC 112, first paragraph. The material referred to in the above rejection under 35 USC 112, first paragraph is considered to be essential subject matter. Furthermore, one cannot incorporate by reference patents published in a foreign country.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

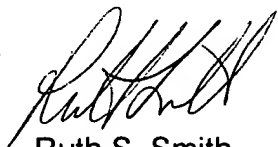
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S. Smith  
Primary Examiner  
Art Unit 3737

RSS